

In the Matter of:
Procino Plating, Inc.

U.S. EPA Docket No.: RCRA-03-2002-0229

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:	:	U.S. EPA Docket No.:
		RCRA-03-2002-0229
Procino Plating, Inc.	:	
901 S. Market Street	:	
Blades, Delaware 19973	:	
Respondent.	:	
Procino Plating, Inc.	:	
901 S. Market Street	:	
Blades, Delaware 19973	:	
Facility.	:	

CONSENT AGREEMENT

Preliminary Statement

1. This Consent Agreement ("CA") is entered into by the Associate Director of the Waste and Chemicals Management Division, U.S. Environmental Protection Agency, Region III ("EPA", "Agency" or "Complainant") and Procino Plating, Inc. ("Respondent" or "Procino") pursuant to Section 3008(a) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by, inter alia, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. Section 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. Section 22.13(b) and Section 22.18(b)(2) and (3). This CA and the accompanying Final Order ("FO") address violations by Respondent of RCRA, the federal regulations implementing RCRA at 40 C.F.R. Parts 260-279, and the Delaware Regulations Governing Hazardous Waste (hereinafter "DRGHW"), at the Procino Plating, Inc. Facility located at 901 S. Market Street, Blades, Delaware ("the Facility"). The DRGHW were initially authorized by EPA pursuant to RCRA Section 3006, 42 U.S.C. Section 6926, on June 8, 1984, effective June 22, 1984 (53 Fed. Reg. 23837). Revisions to DRGHW were authorized by EPA on August 8, 1996, effective October 7, 1996 (61 Fed. Reg. 41345); August 18, 1998, effective October 19, 1998 (63 Fed. Reg. 44152); and July 12, 2000, effective on September 11, 2000 (65 Fed. Reg. 42871).

2. For purposes of this proceeding only, Respondent admits the jurisdictional

allegations set forth in this CA and the accompanying FO, which are collectively referred to as the "CA/FO".

3. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CA, except as provided in Paragraph 2, above.

4. Respondent agrees not to contest EPA's jurisdiction with respect to the execution and issuance of this CA/FO, or the enforcement of the CA/FO.

5. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying FO.

6. Respondent consents to the issuance of this CA/FO and agrees to comply with its terms.

7. Respondent shall bear its own costs and attorneys fees.

Notice of Action to the State of Delaware

8. EPA has given the State of Delaware prior notice of the issuance of this CA/FO in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. Section 6928(a)(2).

Findings of Fact and Conclusions of Law

In accordance with 40 C.F.R. Sections 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law:

9. Respondent, Procino, is a corporation incorporated in the State of Delaware and is a "person" as defined by DRGHW Section 260.10 and RCRA Section 1004(15), 42 U.S.C. Section 6903(15).

10. The Procino Plating, Inc. facility ("Facility") is located in the State of Delaware.

11. Respondent is and has been, at all times relevant to this CA, the "owner" of the Facility as that term is defined by DRGHW Section 260.10.

12. Respondent is and has been, at all times relevant to this Consent Agreement, the "operator" of the Facility as that term is defined by DRGHW Section 260.10.

13. On September 6 and 11, 2001, representatives of EPA and the DNREC conducted a RCRA Compliance Evaluation Inspection at the Facility, pursuant to RCRA 3007(a), 42 U.S.C. Section 6927(a).

14. Respondent has provided electroplating services at the Facility since 1983 and employs approximately 35 persons.

15. At all times relevant to this Consent Agreement, "hazardous waste", including but not limited to hazardous waste having the EPA Hazardous Waste Nos. F001 - F006, D001, D002, have been "generated", "treated", and "stored" at the Facility, as those terms are defined by DRGHW Section 260.10 and Sections 1004(5), (6) and (33) of RCRA, 42 U.S.C. Sections 6903(5), (6), and (33).

16. The Facility is a hazardous waste "storage" and "treatment" "facility" as those terms are defined by DRGHW Section 260.10.

17. Respondent is and has been, at all times relevant to this Complaint, a large quantity "generator" of, and has engaged in the "storage" and "treatment" of "solid waste" and "hazardous waste" described below, as those terms are defined by DRGHW Section 260.10, at all times relevant to the violations alleged in this Consent Agreement.

COUNT I

(Operating a Hazardous Waste Storage Facility Without a Permit - Containers)

18. The allegations of Paragraphs 1 through 17 of this CA are incorporated herein by reference.

19. RCRA Section 3005(a), 42 U.S.C. Section 6925(a), provides, in pertinent part, that each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste is required to have a permit issued pursuant to that section and that the treatment, storage, or disposal of hazardous waste or the construction of a new facility is prohibited unless in compliance with such permit.

20. DRGHW Section 122.1(c) provides, in pertinent part, that the Delaware Department of Natural Resources and Environmental Control ("DNREC") requires a permit for the treatment, storage and disposal of hazardous waste.

21. DRGHW Section 262.34(a) provides, in pertinent part, that a generator may accumulate hazardous waste on-site for 90 days or less without a permit, provided that:

(1). The waste is placed in containers, in tanks or on drip pads and the generator complies with the applicable requirements of Subparts I, AA, BB, and CC of Part 265;

(2). On each container, the date on which each period of accumulation of hazardous waste begins in that container is clearly marked and visible for inspection;

(3). While being accumulated on-site, the container is labeled or clearly marked with the words "hazardous waste"; and

(4). The generator complies with the requirements of DRGHW Part 265, Subpart C relating to preparedness and prevention, Subpart D, relating to contingency plan and emergency procedures, DRGHW Section 265.16 relating to personnel training, and DRGHW Section 268.7(a)(4) relating to land disposal restrictions.

22. DRGHW Section 262.34(b) provides that a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of DRGHW Parts 264 and 265 and the permit requirements of DRGHW Part 122 with an exception not relevant to this case.

23. On September 11, 2001, Respondent was storing two fifty-five gallon containers of hazardous waste (D001, F001 and F003) in a waste cabinet between Buildings One and Two (an unpermitted area) at the Facility. The containers were not labeled with accumulation start dates clearly marked and visible for inspection as required by DRGHW Section 262.34(a)(2). The containers of hazardous waste had been stored at the Facility since October 1996 and June 2001. Such containers of hazardous waste had been accumulated at the Facility for greater than 90 days.

24. On September 11, 2001, the two fifty-five gallon containers described in Paragraph 23, above, were not labeled with the words "hazardous waste" as required by DRGHW Section 262.34(a)(3).

25. On September 11, 2001, Respondent did not meet the requirements of DRGHW Section 265.16(a)(1) regarding personnel training, as described in detail in Paragraph 31, below.

26. On September 11, 2001, Respondent failed to have a contingency plan which met the requirements of DRGHW Section 264.50, as described in Paragraph 35, below.

27. Respondent does not have, and at the time of the violations alleged herein, did not have, a permit to store hazardous waste at the area identified in Paragraph 23, above, at the Facility as required by DRGHW Section 122.1(a) and Section 3005(a) of RCRA.

28. Because Respondent stored the hazardous waste referred to in Paragraphs 23 and 24, above, for greater than 90 days, did not label the containers of hazardous waste referred to in Paragraphs 23 and 24, above, and did not mark the containers of hazardous waste referred to in Paragraph 23 and 24 above with accumulation start dates, Respondent did not qualify for the exemption from the permitting requirement set forth in DRGHW Section 262.34(a)-(c).

29. Because of the activities alleged in Paragraphs 23 through 28, above, Respondent violated DRGHW Section 122.1 and RCRA Section 3005(a) and (e), 42 U.S.C. Section 6925(a)

by storing hazardous waste at the Facility without a permit from at least October 1996 until September 2001.

Count II

(Failure to Provide and Implement a Hazardous Waste Training Program)

30. The allegations of Paragraphs 1 through 29 of this CA are incorporated herein by reference.

31. DRGHW Section 264.16(a)(1) provides that facility personnel must be trained to perform duties in a way that ensures the facility's compliance with the requirements of RCRA as described more fully in Section 264.16(a) through (d). In addition, DRGHW Section 264.16(d) provides that the owner or operator must maintain the following documents and records: job titles and written job descriptions for each position related to hazardous waste management; written descriptions of the type and amount of introductory and continuing training that will be given to each person in a position related to hazardous waste management; and documentation that the training or job experience has been given and completed by facility personnel in positions related to hazardous waste management..

32. On September 11, 2001, Respondent did not have a Hazardous Waste Training program for employees at the Facility as described in Paragraph 31, above. Specifically, Respondent failed to provide annual hazardous waste training in 1997 and 1998, failed to maintain job titles for each position at the Facility related to hazardous waste management and the name of each employee filling the position, and failed to maintain written job descriptions of the type and amount of introductory and continuing training that will be given to each person filling a position related to hazardous waste management.

33. Respondent violated 25 DRGHW Section 264.16 by failing to provide a hazardous waste training program to ensure that Facility personnel perform their duties in a way that ensures the Facility's compliance with the requirements of RCRA and failing to maintain at the Facility required documents and records relating to facility personnel and training.

Count III

(Failure to Maintain an Adequate Contingency Plan)

34. The allegations of Paragraphs 1 through 33 of this CA are incorporated herein by reference.

35. DRGHW Section 264.50 provides that the owner and operator of a facility must have a contingency plan which is designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water at the facility. DRGHW Section 264.52 describes the required contents of the contingency plan.

36. On September 6, 2001, the Facility did not have a contingency plan which satisfied the requirements of DRGHW Section 264.52. Specifically, the contingency plan failed to include arrangements agreed to by local police and fire departments, hospitals, contractors and state and local emergency response teams to coordinate emergency services and a list of emergency equipment at the facility, the location of such equipment, and a description of such equipment and its capabilities. In addition, the Respondent failed to submit a copy of the contingency plan to local police and fire departments, hospitals, and state and local response teams.

37. Respondent violated DRGHW 264.52 by failing to have a contingency plan which met the requirements of that section.

Compliance Tasks

38. Respondent shall perform the following within the time period specified. "Days" as used herein shall mean calendar days unless specified otherwise.

39. Immediately upon the effective date of this CA/FO, Respondent shall

(a). cease the treatment, storage or disposal of hazardous waste at the Facility, except in accordance with a permit under RCRA Section 3005(a) and (e), 42 U.S.C. Section 6925(a) and (e), and/or DRGHW Section 122.1, or a valid exemption from such permit requirements.

(b). If Respondent intends to accumulate on-site hazardous waste at the Facility pursuant to DRGHW Section 262.34(a), Respondent shall perform the following compliance tasks in addition to complying with the conditions set forth in DRGHW Section 262.34(a):

(1). Within thirty (30) days of the effective date of this CA/FO, Respondent shall submit to EPA for review the job title for each position at the Facility related to hazardous waste management, and the name of the employee filling the position. Positions related to hazardous waste management include, but are not limited to, the generating, labeling, dating, moving, sampling, inspecting, shipping/preparing for transport, signing of manifests and/or waste determination of hazardous waste.

(2). Within thirty (30) days of the effective date of this CA/FO, Respondent shall submit to EPA for review the written job description for each position at the Facility related to hazardous waste management as required by DRGHW Section 262.34(a) (4) and DRGHW Section 264.16.

(3). Within sixty (60) days of the effective date of this CA/FO, Respondent shall submit to EPA for review a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position related to hazardous waste

management as required by DRGHW Section 262.34(a) (4) and DRGHW Section 265.16.

(4). Within sixty (60) days of the effective date of this CA/FO, Respondent shall submit to EPA for review a plan, outline and schedule for providing to Facility personnel training at the Facility related to hazardous waste management as required by DRGHW Sections 262.34(a)(4) and 265.16.

(5). Within forty-five (45) days of the effective date of this CA/FO, Respondent shall submit to EPA for review a Contingency Plan for the Facility which satisfies the requirements of DRGHW Sections 262.34(a)(4) and Section 265.51-.56.

(6). Within sixty (60) days of the effective date of this CA/FO, Respondent shall submit to EPA documentation showing that a copy of the facility's Contingency Plan has been submitted to all local police and fire departments, hospitals and State and local emergency response teams that may be called upon to provide emergency services, as required by DRGHW Sections 262.34(a)(4) and 264.52.

(c). Withing ninety (90) days of the effective date of this CA/FO, and thereafter on a quarterly basis for a period of one year, Respondent shall submit to EPA the following information:

- 1). A list of the hazardous wastes generated at Respondent's Facility categorized by calendar month of generation. The list shall include the process(es) by which each hazardous waste was generated, the date of generation of each such hazardous waste, the amount of each such hazardous waste generated and the location of each such hazardous waste while being stored at the Facility.
- 2). A copy of each inspection log used to document inspections for each less-than 90-day hazardous waste storage area at the Facility.
- 3). A copy of each manifest for each hazardous waste listed in the previous quarterly reports that has been shipped off-site for treatment, storage or disposal. (Not required for the first quarterly report).

(d). **Certification** - Within ninety (90) days of the effective date of this CA/FO, Respondent shall certify to EPA in writing that it is in compliance with the Compliance Tasks described in Section 39, above. Such certification shall be made in the manner specified in Section 39(e), below, of this CA/FO.

(e). **Submissions to EPA:**

- (1). Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this CA/FO, including, but not limited to, any documents referred to in this Section 39 shall include a certification by a responsible corporate officer of Respondent. For purposes of such certification, a

responsible corporate officer of Respondent means: 1. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or 2. The manager of one or more manufacturing, production, or operating facilities exceeding \$25 million in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. The aforesaid certification shall provide the following statement above the signature of the responsible corporate officer signing the certification on behalf of the Respondent.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision according to a system designated to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and/or imprisonment for knowing violations.

Signature: _____

Name: _____

Title: _____

(2.) Mailing to EPA - Documents to be submitted to EPA pursuant to or concerning this CA/FO shall be sent via certified mail, return receipt requested, or overnight commercial delivery service to the attention of:

Jeanna R. Henry (3WC31)
RCRA Compliance and Enforcement Officer
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19130

and:

Cheryl L. Jamieson, Esq. (3RC30)
Senior Asst. Regional Counsel
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19130

(3). Mailing to Respondent - Documents to be mailed by EPA to Respondent shall be sent by certified mail, return receipt requested, or overnight commercial delivery service, to:

Patrick Procino, President
Procino Plating, Inc.
901 S. Market St.
Blades, DE 19973

Other Applicable Laws

40. Nothing in this CA/FO shall relieve Respondent of any duties or obligations otherwise imposed upon it by applicable federal, state or local laws or regulations.

41. The failure of Respondent to comply with the Compliance Tasks set forth above, including failure to complete any task within the deadline specified for such task, shall be deemed a violation of this CA/FO and may subject Respondent to further administrative or judicial enforcement.

Civil Penalty

42. In consideration of Respondent's current financial situation and inability to pay, as documented to EPA by Respondent, EPA is assessing a civil penalty against Respondent in the amount of \$0.00.

43. The aforementioned civil penalty amount was determined after consideration of the statutory factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. Section 6928(a)(3), which include the seriousness of the violation and any other good faith efforts to comply with the applicable requirements, and in accordance with EPS's November 1990 RCRA Civil Penalty Policy.

44. EPA hereby agrees and acknowledges that the payment of the civil penalty amount set forth above shall be in full and final satisfaction of all claims for civil penalties which Complainant may have under Section 3008(a) of RCRA, 42 U.S.C. Section 6928(a), for the violations alleged in the Consent Agreement.

45. The settlement embodied in this Consent Agreement is based in part upon an analysis of Respondent's ability to pay a civil penalty. This analysis was based upon information submitted to Complainant by Respondent. Respondent, by his signature to this Consent Agreement, certifies that the information he has submitted to EPA regarding his ability to pay an regarding any other matter at issue in the Consent Agreement is accurate and not misleading. Respondent is aware that the submission of false or misleading information to the

United States government may subject them to separate civil and/or criminal liability. Complainant shall have the right to institute new and separate actions to recover civil penalties for the claims made in the Consent Agreement in this matter if Complainant obtains evidence that the information provided and/or representations made by Respondent to EPA regarding his ability to pay or regarding the matters at issue in the Complaint are false or in any material respect inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, EPA may have under law or equity in such event.

46. Failure by the Respondent to comply with the requirements of this CA/FO pursuant to the terms of this CA/FO, may subject the Respondent to an additional enforcement action, including, but not limited to, the issuance of an Administrative Complaint and the imposition of penalties as provided by Section 3008(g) of RCRA, 42 U.S.C. Section 6928(g), or the accompanying Final Order.

Reservation of Rights

47. This CA/FO resolves only those civil claims which are alleged in this CA/FO. EPA reserves the right to commence action against any person including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CA/FO following its filing with the Regional Hearing Clerk.

Full and Final Satisfaction

48. Completion of the Compliance Tasks set forth in this CA/FO, above, shall constitute full and final satisfaction of Complainant's civil claims set forth in this CA/FO.

Parties Bound

49. This CA/FO shall apply to and be binding upon the EPA, Respondent, and Respondent's officers, employees, agents, successors and assigns. By his/her signature below, the person signing this CA on behalf of Respondent is acknowledging that he or she is fully authorized to enter into this Agreement on behalf of Respondent and to bind Respondent to the terms and conditions of this CA/FO.

Effective Date

50. The effective date of this CA/FO is the date on which the FO, signed by the Regional Administrator of U.S. EPA Region III or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

Entire Agreement

51. This CA/FO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CA/FO.

For the Respondent:

Date: 9/5/02

Procino Plating, Inc.

By: Patrick Procino Pres.

Patrick Procino, President
Procino Plating, Inc.
901 S. Market St.
Blades, DE 19973

For the Complainant:

Date: 9/6/02

U.S. Environmental Protection Agency
Region III

By: Cheryl L. Jamieson

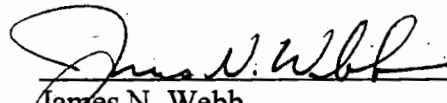
Cheryl L. Jamieson
Senior Asst. Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103

In the Matter of: Procino Plating, Inc.

U.S. EPA Docket No.: RCRA-03-2002-0229

The Waste and Chemicals Management Division, United States Environmental Protection Agency -Region III, recommends that the Regional Administrator of the U.S. EPA Region III, or his designee, the Regional Judicial Officer, issue the accompanying Final Order.

September 26, 2002
Date


James N. Webb
Associate Division Director for Enforcement
Waste and Chemicals Management Division

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

IN RE:

Final Order

**Procino Plating, Inc.
901 S. Market Street
Blades, Delaware 19973**

Docket No. RCRA 03-2002-0229

Respondent.

**Proceeding under Section 3008(a)
and (g), 42 U.S.C. Section 6928(a) and (g), of
the Resource Conservation and
Recovery Act**

**Procino Plating, Inc.
901 S. Market Street
Blades, Delaware 19973**

Facility.

FINAL ORDER

Complainant, the Associate Director of the Waste and Chemicals Management Division, U.S. Environmental Protection Agency - Region III, and Respondent, Procino Plating, Inc., have executed a document entitled "Consent Agreement", which I ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. Sections 22.13(b) and 22.18(b)(2) and (3)).

With regard to the civil penalty amount agreed to by Complainant and Respondent as part of the settlement of the above-captioned matter memorialized in this Final Order and the accompanying Consent Agreement (collectively referred to as the "CA/FO"), I have taken into

account the penalty criteria provided in Section 3008(a)(3) of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6928(a)(3), and the RCRA Civil Penalty Policy (October 1990).

Respondent shall pay a civil penalty in the amount of \$0.00 as specified in the Consent Agreement and is hereby ordered to comply with the compliance tasks and other terms and conditions of the accompanying CA/FO.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

Date: 9/26/02

BY: Renée Sarajian
Renée Sarajian
Regional Judicial Officer
United States Environmental Protection Agency
Region III